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In re Application of	:	
MURRAY et al.	:	
Application No.: 10/575,589	:	DECISION
PCT No.: PCT/GB2004/004371	:	
Int. Filing Date: 14 October 2004	:	
Priority Date: 15 October 2003	:	
Attorney Docket No.: URQUH73865	:	
For: LABORATORY APPARATUS WITH	:	
TWO CABINETS	:	

This is a decision on applicants' "PETITION FOR APPLICATION ON BEHALF OF NON-SIGNING INVENTOR UNDER 37 CFR 1.47(b) AND MPEP 409.03(b)", which has properly been treated as a petition under 37 CFR 1.47(a), filed 31 May 2007 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 14 October 2004, applicants filed international application PCT/GB2004/004371, which designated the United States and claimed a priority date of 15 October 2003. A copy of the international application was communicated from the International Bureau to the USPTO on 06 May 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 17 April 2006 (15 April 2006 being a Saturday).

On 12 April 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 01 December 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. The NOTIFICATION set a two-month extendable period for response.

On 31 May 2007, applicants filed the instant petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a petition/fee for a four month extension of time, a declaration of

inventors, a declaration of Sue Ratcliffe, a declaration of Andrew Skinn, and a declaration of John K. Fitzgerald.

DISCUSSION

Declaration of Inventors

The declaration of inventors filed 31 May 2007 contains a signature under the name of Fergus Francis Murray, the allegedly non-signing inventor. If this is Mr. Murray's signature, then the petition under 37 CFR 1.47(a) would be moot. If this is not Mr. Murray's signature, then applicants are required to specify whose signature it is.

In the event that this signature is not Mr. Murray's, the petition under 37 CFR 1.47(a) is addressed below.

Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Items (1) and (3) have been satisfied.

Item (2) has not been satisfied. The declarations of Sue Ratcliffe, Andrew Skinn, and John K. Fitzgerald have been considered. To establish a refusal to sign, it is required that the inventor be presented with the application papers (specification, including claims, drawings, and oath or declaration). See MPEP 409.03(d). "It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956)." Here, it does not appear that Mr. Murray was presented with a copy of the application papers. MPEP 409.03(d). Regarding the refusal of Ms. Murray, MPEP § 409.03(d) states in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

It appears that the refusal was made to Mr. Skinn (paragraph 4 of the declaration of Sue Ratcliffe). However, the declaration of Mr. Skinn makes no reference to this refusal.

It is not clear whether item (4) has been met. As noted above, the declaration of inventors includes a signature under Fergus Francis Murray's name that may or may not be his signature.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. A proper response must specify whose signature is below non-signing inventor Fergus Francis Murray's name. **Failure to timely file the proper response will result in abandonment of this application.** Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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